* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 12945/2005

VISHNU SHANKAR SINGH ..... Petitioner through
Mr. Brajesh Kumar, Adv.

versus

UOI & ORS. ..... Respondents through
Ms. Richa Kapur, Adv.

Date of Decision: December 19, 2007

CORAM:
HON'BLE MR. JUSTICE VIKRAMAJIT SEN
HON'BLE MR. JUSTICE S.L.BHAYANA

1. Whether reports of local papers may be allowed to see the Judgment? Yes

2. To be referred to the Reporter or not? Yes

3. Whether the Judgment should be reported in the Digest? Yes

VIKRAMAJIT SEN, J. (Oral)

J U D G M E NT

1. On August 12, 2005, the petitioner was given an opportunity to file a Rejoinder. Despite several hearings, Rejoinder has not been filed. At the commencement of the arguments today, counsel for the Petitioner had submitted that a Rejoinder is not called for.

2. The case of the Petitioner is that his services have been wrongly terminated. Learned counsel for the Petitioner submits that since the appointment letter of the Petitioner has been signed by the DIGP (CRPF), the dismissal order issued by the Commandant 153 Bn CRPF, dated 2nd January, 2004 violates Article 311 of the Constitution of India. Learned counsel for the Respondent submits that the appointing authority is actually the Commandant and therefore, no infraction is made out. This argument of the Respondent is accepted. The discussion contained in **Kanta Devi Vs. Union of India**, (2003) 4 SCC 753 is topical, as it has been held that just because the prior approval of the IG is required it does not alter the position that the Commandant is actually the appointing authority. We are so mindful of the position that in the case in hand the appointment appears to have been signed by an officer senior to the Commandant.

3. The Respondents have acted upon Rule 6 of the Temporary Service Rules. It starts with the non obstante clause that:

> "Notwithstanding anything contained in Rule 5, the services of a temporary Government servant may be terminated at any time without

notice of being declared physically unfit for continuance in service by an authority who would have been competent to declare him as permanently incapacitated for service had his appointment been permanent."

4. The relevant submissions made in the Counter Affidavit reads as follows:-

"2(iv) In reply to the contents of para 2(iv) of the writ petition it is submitted that the Petitioner had reported in the 153 Battalion CRPF on 9.3.2003 for basic training. His basic training along with other recruits commenced on 21.4.2003. After few days, he fell ill on different dates due to fever, dysentery, etc. After medical treatment in the unit, he was further referred to B.H.I. CRPF, New Delhi on 13.8.2003 for detailed examination and treatment keeping in view of his abnormal behaviour. He remained admitted in the Hospital at Delhi from 13.8.2003 to 3.11.2003 for specialized treatment, where it was diagnosed as "depression". It is submitted that the condition of the Petitioner was normal scant of brain. But he was advised for 30 days rest on medical grounds by CMO, Base Hospital-1, CRPF, New Delhi w.e.f. 3.11.2003.

2(v) In reply to the contents of para 2(v) of the writ petition it is submitted that the Petitioner during medical rest period developed abnormal behaviour. It was seen that during night hours he did not sleep properly and used to roam around sentry post and other areas. Keeping in view his abnormal behaviour and indulging in such unwanted activities he was again referred to Base Hospital-I of the Respondent at New Delhi where he was admitted on 15.11.2003. Despite better treatment and investigation, he continued to have headache off and on, slept up to late in the morning, showed no interest in work and was very lethargic. He was diagnosed “depression with sinusitis and chronic headache” but had not improved significantly even after 3-4 months.

2(vi) That the contents of para 2(vi) of the Writ Petition need no reply as the same are matter of record.

2(vii) & (viii) That the contents of para 2(vii) and (viii) of the Writ Petition need no reply as the same are matter of record.

2(ix)That the contents of para 2(ix) of the writ petition are wrong and denied as stated. In reply thereto it is submitted that as already stated in the preceding

> paragraphs, the petitioner was a case of "depression with sinusitis and chronic headache". The CMO of the Respondent at Delhi opined that the Petitioner cannot become an effective member of the Respondent Force. Therefore, the services of the Petitioner were terminated w.e.f. 2.1.2003. Rest of the contents of para under reply are wrong and denied."

5. The Petitioner was admittedly a temporary servant. Since the asseverations in the Counter Affidavit have been deliberately not replied to, it must be presumed that the statements made therein are correct. In these circumstances, we find no irregularity or illegality in the impugned Order.

6. Dismissed.

(VIKRAMAJIT SEN)
JUDGE

(S.L.BHAYANA)
JUDGE

DECEMBER 19, 2007
vk.